

ALLOCATION AGREEMENT  
AMONG  
THE UNITED STATES OF AMERICA,  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,  
COACHELLA VALLEY WATER DISTRICT,  
IMPERIAL IRRIGATION DISTRICT,  
SAN DIEGO COUNTY WATER AUTHORITY,  
THE LA JOLLA, PALA, PAUMA, RINCON AND SAN PASQUAL  
BANDS OF MISSION INDIANS,  
THE SAN LUIS REY RIVER INDIAN WATER AUTHORITY,  
THE CITY OF ESCONDIDO AND VISTA IRRIGATION DISTRICT

ARTICLE I

Parties and Authority

THIS ALLOCATION AGREEMENT AMONG THE UNITED STATES OF AMERICA, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, COACHELLA VALLEY WATER DISTRICT, IMPERIAL IRRIGATION DISTRICT, THE SAN DIEGO COUNTY WATER AUTHORITY, THE LA JOLLA, PALA, PAUMA, RINCON AND SAN PASQUAL BANDS OF MISSION INDIANS, THE SAN LUIS REY RIVER INDIAN WATER AUTHORITY, THE CITY OF ESCONDIDO AND VISTA IRRIGATION DISTRICT ("Allocation Agreement"), signed this 10<sup>th</sup> day of October, 2003, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Federal Reclamation Law, including the Act of Congress approved December 21, 1928 (45 Stat. 1057), referred to as the Boulder Canyon Project Act, pursuant to the Act of Congress approved November 17, 1988 as amended ("Public Law 100-675"), and among the United States of America ("United States") both in its own right and on behalf of the La Jolla, Pala, Pauma, Rincon

and San Pasqual Bands of Mission Indians and the San Luis Rey River Indian Water Authority as trustee, acting by and through its Secretary of the Interior ("Secretary"), The Metropolitan Water District of Southern California ("MWD"), the Coachella Valley Water District ("CVWD"), the Imperial Irrigation District ("IID"), the San Diego County Water Authority ("SDCWA"), the La Jolla, Pala, Pauma, Rincon and San Pasqual Bands of Mission Indians (collectively, the "Indian Bands"), the San Luis Rey River Indian Water Authority ("Indian Water Authority"), the City of Escondido ("Escondido"), and Vista Irrigation District ("Vista"), each of which is at times referred to individually as "Party" and which are at times collectively referred to as "Parties."

WITNESSETH THAT:

## ARTICLE 2

### Explanatory Recitals

2.1 WHEREAS, the United States has constructed the All-American Canal and its Coachella Branch ("Coachella Canal") in accordance with the Boulder Canyon Project Act; and

2.2 WHEREAS, the Secretary, pursuant to Title II of Public Law 100-675 ("Title II"), is authorized to construct a new lined canal or to line the previously unlined portions of the All-American Canal from the vicinity of Pilot Knob to Drop 4 and the Coachella Canal from Siphon 7 to Siphon 32, or to construct seepage recovery facilities in the vicinity of Pilot Knob to Drop 4, including measures to protect public safety; and

2.3 WHEREAS, Title II provides that the Secretary shall determine the quantity of water conserved by the works constructed under Title II and may revise such determination at reasonable intervals based on such information as the Secretary deems

appropriate and further provides that the determinations shall be made in consultation with Palo Verde Irrigation District ("PVID"), IID, CVWD and MWD; and

2.4 WHEREAS, litigation is pending in the United States District Court for the Southern District of California to determine the rights of the Indian Bands, Escondido and Vista to the water in the San Luis Rey River, related proceedings are pending before the Federal Energy Regulatory Commission and on November 17, 1988, the President of the United States approved Title I of Public Law 100-675, to provide for the settlement of the reserved water rights claims of the Indian Bands; and

2.5 WHEREAS, no federal funds are authorized to be appropriated for the Title II work described in Section 2.2 herein; and

2.6 WHEREAS, the California Water Code Section 12560 et seq. provides for two hundred million dollars (\$200,000,000) to be continuously appropriated from the General Fund to a Colorado River Management Account to be used by the Director of the California Department of Water Resources ("DWR") to finance and arrange for lining portions of the All-American Canal and the Coachella Canal; and

2.7 WHEREAS, the Parties intend that the State funds appropriated pursuant to California Water Code Sections 12560 et seq. be used to pay all reasonable and necessary costs for work directly associated with the Projects occurring after September 24, 1998 and approved by DWR ("Eligible Project Costs") in an amount not to exceed in aggregate two hundred million dollars (\$200,000,000) and in accordance with the terms and conditions of the All-American Canal Lining Project Funding Agreement ("AAC Funding Agreement") and the Coachella Canal Lining Project Funding Agreement ("CC Funding Agreement"), respectively; and

2.8 WHEREAS, Section 12562(b) of the California Water Code provides for the use by the Director of DWR of thirty-five million dollars (\$35,000,000) to finance the installation of recharge, extraction, and distribution facilities for groundwater conjunctive use programs necessary to implement the “California Plan,” and it is the intention of the Parties to make available for use by SDCWA for conjunctive use projects within its boundaries those funds to the extent unexpended as of the Effective Date; and

2.9 WHEREAS, Section 79567 of the California Water Code identifies the sum of twenty million dollars (\$20,000,000) as available for appropriation by the California Legislature from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 to DWR for grants for canal lining and related projects necessary to reduce Colorado River water use, and it is the intention of the Parties that those funds be available for use by SDCWA, IID or CVWD for the All-American Canal and Coachella Canal Lining Projects; and

2.10 WHEREAS, Title I of Public Law 100-675 (“Title I”) as amended on October 27, 2000 provides that the Secretary, acting through the Commissioner of Reclamation, shall permanently furnish annually 16,000 acre-feet of the water conserved by the works authorized in Title II, for the benefit of the Indian Bands and Escondido and Vista in accordance with the San Luis Rey River Indian Water Rights Settlement Agreement (“Settlement Agreement”); provided that during construction of said works, the Indian Water Authority, a permanent intertribal entity established by the Bands, Escondido and Vista, shall receive 17 percent of any water conserved by said works up to a maximum of 16,000 acre-feet per Calendar Year; and

2.11 WHEREAS, Title II provides for the quantity of water conserved from the canal linings to be made available for consumptive use by California Contractors within their service areas according to their priorities under the Seven Party Agreement; and

2.12 WHEREAS, it was the original intention of the Parties to allocate a portion of the water conserved from the canal linings to MWD, but MWD now desires to assign all of its rights, interest and duties with respect to and in such conserved water to SDCWA, with the exception of water to be allocated pursuant to Section 7.6 herein, and SDCWA desires to accept such assignment of rights, interest and duties from MWD; and

2.13 WHEREAS, although MWD, IID and CVWD are not parties to the pending litigation and the related proceeding before the Federal Energy Regulatory Commission referenced in Section 2.4 herein, MWD, IID and CVWD are willing to facilitate implementation of the settlement of the dispute under the terms of this Allocation Agreement; and

2.14 WHEREAS, the Parties desire to enter into this Allocation Agreement to provide for the allocation of an amount of Colorado River water equal to the amount conserved from the Title II works; and

2.15 WHEREAS, the United States holds title to the All-American Canal and the Coachella Canal, and IID operates and maintains the All-American Canal pursuant to Contract No. I1r-747 with the United States dated December 1, 1932 and the Amendatory and Supplemental Contract with the United States dated March 4, 1952, and CVWD operates and maintains the Coachella Canal pursuant to Contract No. I1r-781 with the United States dated October 15, 1934, a system of protective works designed to protect the Coachella Canal pursuant to Supplemental Contract No. I1r-781 with the United

States dated December 22, 1947, and a concrete-lined Coachella Canal and structures from Station 2 plus 26 to the beginning of Siphon 7 pursuant to Amendatory Contract No. 7-07-30-W0007 with the United States dated March 14, 1978; and

2.16 WHEREAS, Section 12562(a)(2) of the California Water Code has been amended by Chapter 13 of Stats.2003 to require that the Projects be completed not later than December 31, 2008, or such later date as may be required by extraordinary circumstances.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements herein contained, the Parties agree:

### ARTICLE 3

#### Definitions and Word Usage

3.1 "AAC Committee" shall mean the All-American Canal Lining Project Operations, Maintenance, and Repair Coordinating Committee.

3.2 "All-American Canal" shall mean the canal through which water is conveyed from the Imperial Dam and Desilting Works to the Westside Main Canal.

3.3 "All-American Canal Lining Project" shall mean a portion of the work authorized in Title II which will result in a lined All-American Canal from one mile west of Pilot Knob to Drop 3, a distance of approximately 23 miles.

3.4 "Calendar Year" shall mean the 12-month period running from January 1 through December 31.

3.5 "Calendar Years" shall mean more than one Calendar Year.

3.6 "California Contractor" shall mean one of the California Contractors.

3.7 "California Contractors" shall mean CVWD, IID, MWD and PVID.

3.8 “Capital Cost Payment(s)” shall mean the payments described in Exhibit B.

3.9 “CC Committee” shall mean the Coachella Canal Lining Project Operations, Maintenance, and Repair Coordinating Committee.

3.10 “Coachella Canal” shall mean the Coachella Branch of the All-American Canal, through which water is conveyed from Drop 1 of the All-American Canal to Lake Cahuilla.

3.11 “Coachella Canal Lining Project” shall mean a portion of the work authorized in Title II which will result in a lined Coachella Canal from Siphons 7 to 14 and from Siphons 15 to 32, a distance of 33.2 miles.

3.12 “Colorado River Management Account” shall mean the account created pursuant to California Water Code Section 12561.

3.13 “Commissioner” shall mean the Commissioner of Reclamation.

3.14 “Committee” shall mean the “AAC Committee” for the All-American Canal Lining Project or the “CC Committee” for the Coachella Canal Lining Project.

3.15 “Costs” shall mean the combined total of: (a) Net Additional Operation, Maintenance and Repair Costs; and (b) Mitigation Costs associated with the Environmental Commitment Plan.

3.16 “Criteria for Coordinated Long-range Operation of Colorado River Reservoirs” shall mean the document transmitted by the Secretary on June 8, 1970 to the Governors of the Colorado River Basin States pursuant to the Colorado River Basin Project Act of September 30, 1968, as it may be amended from time to time.

3.17 “Cumulative Shortage Losses” shall mean the sum of: (a) the cumulative difference between the total volume of water allocated to MWD and SDCWA and 93,700 acre-feet in each of those Shortage Years that the conditions precedent to the allocation of water to the San Luis Rey Settlement Parties have not been met; or (b) the cumulative difference between the total volume of water allocated to SDCWA and 77,700 acre-feet in each of those Shortage Years that an allocation is being made to the San Luis Rey Settlement Parties as applicable.

3.18 “CVWD” shall mean the Coachella Valley Water District, a public agency of the State organized and existing under the County Water District Act of the State and acts amendatory thereof or supplementary thereto.

3.19 “Due Day” shall mean January 16th of each Calendar Year of this Allocation Agreement, or if January 16th falls on a Saturday, Sunday or a State legal holiday, the next succeeding business day.

3.20 “DWR” shall mean the California Department of Water Resources.

3.21 “Effective Date” shall mean the date on which the United States District Court for the Southern District of California executes the Stipulation and Order dismissing the case IID v. United States, et al., Case No. 03cv0069w (JFS).

3.22 “Effects on MWD” shall mean: (1) a reduction in the amount of surplus water otherwise allocated or available to MWD for any and all purposes; or (2) a reduction in MWD's net diversions of surplus water through the All-American Canal or Coachella Canal that MWD has a right to make; any of which could result from IID's election to utilize water made available for allocation as a result of the Projects which would otherwise be made available to MWD.



3.23 “Environmental Commitment Plan” shall mean for the All-American Canal Lining Project, Reclamation’s plan dated July 8, 2003, as amended from time to time upon agreement of the responsible parties, that implements the All-American Canal Lining Project’s Mitigation; and for the Coachella Canal Lining Project, Reclamation’s plan dated March 4, 2003, as amended from time to time upon agreement of the responsible parties, that implements the Coachella Canal Lining Project’s Mitigation.

3.24 “Escondido” shall mean the City of Escondido, a general law city organized and existing under the laws of the State.

3.25 “Exhibit A” shall mean Exhibit A to this Allocation Agreement, entitled Amount of Water Conserved by Lining Each of the Reaches of the All-American Canal and Coachella Canal.

3.26 “Exhibit B” shall mean Exhibit B to this Allocation Agreement, entitled Capital Cost Payments.

3.27 “Extension Year” shall mean one of the Extension Years.

3.28 “Extension Years” shall mean those Calendar Years required to fully replace for SDCWA all Cumulative Shortage Losses as provided in Section 5.6 of this Allocation Agreement and all IID Call Water as provided in Section 9.5.1 and 9.6.4 of this Allocation Agreement.

3.29 “IID” shall mean the Imperial Irrigation District, a public agency of the State organized and existing under the Irrigation District Act of the State.

3.30 “IID Call Water” shall mean the total volume of water allocated to IID pursuant to the exercise of its call rights under this Allocation Agreement.

3.31 “Indian Bands” shall mean the La Jolla, Pala, Pauma, Rincon and San Pasqual Bands of Mission Indians.

3.32 “Indian Water Authority” shall mean the San Luis Rey River Indian Water Authority, a permanent intertribal entity recognized and approved by Public Law 100-675.

3.33 “Interim Surplus Guidelines” shall mean the guidelines implemented by the Secretary of the Interior under which surplus water conditions are determined in the Lower Colorado River Basin through 2016 following a January 16, 2001 Record of Decision.

3.34 “Lower Colorado Regional Director” shall mean the Regional Director of Reclamation's Lower Colorado Regional Office or his or her duly authorized successor.

3.35 “Mitigation” shall mean the measures to be implemented as described in the Environmental Commitment Plan for the Project.

3.36 “Mitigation Costs” shall mean the costs specified in Section 13.3 of this Allocation Agreement associated with implementing the Mitigation for the Project.

3.37 “MWD” shall mean The Metropolitan Water District of Southern California, a public agency of the State organized and existing under the Metropolitan Water District Act of the State.

3.38 “Net Additional Operation, Maintenance and Repair (OM&R) Costs shall mean the costs specified in Section 13.2 of this Allocation Agreement.

3.39 “Notice of Default” shall mean a document informing a Party of an amount past due, containing sufficient information to permit the Party to pay the amount due to the Party owed the amount due.

3.40 “Parties” shall mean the United States, MWD, CVWD, IID, SDCWA, the Indian Bands, the Indian Water Authority, Escondido and Vista.

3.41 “Party” shall mean one of the Parties.

3.42 “Projects” shall mean the All-American Canal Lining Project and the Coachella Canal Lining Project and, in its singular form, “Project,” shall mean either of said Projects, or both, as the context shall require.

3.43 “Public Law 100-675” shall mean 102 Stat. 4000 through 4011, as amended by Section 117 of Public Law 102-154, 105 Stat. 1012 through 1013, Public Law 105-256, 112 Stat. 1896, 1899 and Section 211 of Public Law 106-377--Appendix B, 114 Stat. 1441A-70 through 71.

3.44 “PVID” shall mean the Palo Verde Irrigation District, a public agency of the State organized and existing under the Palo Verde Irrigation District Act of the State.

3.45 “Quantification Settlement Agreement” shall mean that agreement of the same name among IID, CVWD, and MWD.

3.46 “Reclamation” shall mean the Bureau of Reclamation, a bureau of the United States Department of the Interior.

3.47 “SDCWA” shall mean the San Diego County Water Authority, a public agency of the State organized and existing under the County Water Authority Act.

3.48 “San Luis Rey Settlement Parties” shall mean Escondido, Vista, the Indian Bands, and the Indian Water Authority.

3.49 “Secretary” shall mean the Secretary of the Interior or her or his duly authorized representative or successor.

3.50 “Section 4” shall mean the section of the All-American Canal from Pilot Knob to immediately upstream of Drop 1.

3.51 “Section 5” shall mean the section of the All-American Canal from Drop 1 to the East Highline Check.

3.52 “Settlement Agreement” shall mean the agreement among the United States, Escondido, Vista, and the Indian Bands referenced in Title I providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and the Federal Energy Regulatory Commission.

3.53 “Shortage Year” shall mean a Calendar Year or a portion of a Calendar Year following completion of the Projects for which the Secretary determines under the Criteria for Coordinated Long-range Operation of Colorado River Reservoirs that a shortage condition exists and reduces the amount of water conveyed through the All American or Coachella Canals due to the availability of less than 4.4 million acre- feet to California in that Calendar Year.

3.54 “Shortage Years” shall mean more than one Shortage Year.

3.55 “State” shall mean the State of California.

3.56 “Title I” shall mean Title I of Public Law 100-675.

3.57 “Title II” shall mean Title II of Public Law 100-675.

3.58 “Uncontrollable Force” shall mean any cause beyond the control of the Party affected, excluding a shortage determined by the Secretary in accordance with the Secretary’s Criteria for Coordinated Long-range Operation of Colorado River Reservoirs, and shall include, but is not limited to, facilities failure, flood, earthquake, storm,

lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, restraint by court or public authority or other events which by exercise of due diligence and foresight such Party could not have been reasonably expected to avoid.

3.59 “United States” shall mean the United States of America.

3.60 “Vista” shall mean the Vista Irrigation District, a public agency of the State organized and existing under the Irrigation District Act of the State.

3.61 “Year \_\_\_” (e.g. Year 45) shall mean one in the series of Calendar Years occurring after the Effective Date of this Allocation Agreement with Year 1 being the first full or partial Calendar Year after the Effective Date.

3.62 Word Usage and Rules of Construction Unless the context clearly requires otherwise:

3.62.1 The plural and singular numbers include the other;

3.62.2 The masculine, feminine, and neuter genders include the others;

3.62.3 “Shall,” “will,” and “must,” are each mandatory;

3.62.4 “May” is permissive;

3.62.5 “May not” is prohibitory;

3.62.6 “Or” is not exclusive;

3.62.7 “Includes” and “including” are not limiting;

3.62.8 “Between” includes the ends of the identified range; and

3.62.9 “Person” includes any natural person or legal entity; and

3.62.10 The Exhibits attached to this Allocation Agreement are incorporated by reference and are a part of this Allocation Agreement to the same extent as the Articles.

## ARTICLE 4

### Term

4.1 Term. This Allocation Agreement shall become effective on the Effective Date if it has been executed by the United States, MWD, CVWD, IID and SDCWA by that date, notwithstanding the fact that any of the other Parties has not executed this Allocation Agreement. In the event that any of the Parties other than the United States, MWD, CVWD, IID and SDCWA have not executed this Allocation Agreement by the Effective Date, this Allocation Agreement shall be binding on those Parties who have executed the Allocation Agreement. Any Party who executes this Allocation Agreement following the Effective Date shall be entitled to all rights and bound by all obligations under this Allocation Agreement thereafter. No Party shall take a position in any administrative, judicial or legislative forum contrary to or inconsistent with this Section 4.1.

4.2 Termination. The initial term of this Allocation Agreement shall be 55 Calendar Years in accordance with the provisions of Title II. The Parties hereby consent to renewal of the term for an additional 55 Calendar Years. Said renewal shall be automatic and shall not require any action by any party. The term shall be further extended for the number of Calendar Years required to fully deliver to SDCWA all Cumulative Shortage Losses as provided in Section 5.6 of this Allocation Agreement and all IID Call Water as provided in Section 9.5.1 and 9.6.4 of this Allocation Agreement. Said extension shall be automatic and shall not require any action by any party. At such time as this Allocation Agreement terminates, Article 7 of this Allocation Agreement and

all other provisions of this Allocation Agreement necessary to effectuate Article 7 shall remain in full force and effect and shall never terminate.

#### ARTICLE 4A

##### Assignment of MWD's Rights and Duties to SDCWA

4A.1 Assignment of Rights and Duties by MWD. In consideration of the promises and agreements contained in the Colorado River Water Delivery Agreement between the United States, IID, CVWD, MWD, and SDCWA, and SDCWA's agreement to assume all of MWD's obligations under this Allocation Agreement, MWD hereby assigns to SDCWA all of MWD's rights and interest in delivery of 77,700 acre-feet of Colorado River water previously intended to be delivered to MWD under Article 10 and Section 5.6 of this Allocation Agreement, as set forth in Section 2.12 of this Allocation Agreement. In addition, MWD assigns to SDCWA its right to receive reimbursement or payments with respect to the All-American Canal Lining Project and the Coachella Canal Lining Project under applicable federal and state law, including subsections (a) and (b) of California Water Code Section 12562, as amended, and agrees to make reasonable efforts to support appropriation to SDCWA of the funding referenced in Sections 2.8 and 2.9 herein. MWD agrees that it shall cooperate in and take any further actions necessary to accomplish the assignment of rights and interest made under this Article 4A and shall take no action which interferes with the delivery of water to SDCWA under this Allocation Agreement.

4A.2 Acceptance of Assignment of Rights and Duties by SDCWA. SDCWA hereby accepts the assignment of rights and duties from MWD as set forth in Section 4A.1. SDCWA agrees that it shall cooperate in and take any further actions necessary to

accomplish the assignment of obligations made under this Article 4A and shall not assert that MWD has continuing obligations under this Allocation Agreement, except as provided in Section 4A.3.

4A.3 Water Allocated to the San Luis Rey Settlement Parties. Nothing in this Allocation Agreement shall be construed as an assignment of rights or duties from MWD to SDCWA with respect to water made available under Article 7 of this Allocation Agreement.

4A.4 Delivery of Water to SDCWA. SDCWA shall take delivery of water under this Allocation Agreement pursuant to the Colorado River Water Delivery Agreement and the Amended and Restated Agreement Between the MWD and the SDCWA for the Exchange of Water dated as of October 9, 2003, or otherwise.

4A.5 Acknowledgement by All Parties. All Parties to this Allocation Agreement acknowledge that the assignment of rights, interest and duties contained in this Article have occurred, do not object to the assignment thereof because such assignment is not to affect any Party's rights, interests and duties under this Agreement other than MWD and SDCWA, and covenant that they will not interfere with delivery of water to SDCWA hereunder or claim that MWD has continuing obligations under this Allocation Agreement, except as provided in Section 4A.3.

## ARTICLE 5

### Quantity of Water Available for Allocation

5.1 Secretarial Determinations During the Term of the Quantification Settlement Agreement. During the term of the Quantification Settlement Agreement, the



Secretary shall determine the quantity of water available for allocation as a result of the Projects in accordance with Sections 5.2 through 5.6 herein.

5.2 Reach by Reach Construction The Secretary will determine the completion of the lining of each canal reach during the construction of the Projects. The Secretary will determine the amount of Colorado River water available for allocation as a result of lining each canal reach, in accordance with Exhibit A, which sets forth the amount of water which will be conserved by each reach in accordance with the Final Environmental Impact Statement/ Environmental Impact Report for each Project. The Secretary will send a notice of reach completion for each canal reach to the Parties as each such reach is completed and will include in the notice the Secretary's determination as to the amount of water available for allocation as a result of lining that reach.

5.3 Project Completion The Secretary will determine the completion of construction of the All-American Canal Lining Project and the Coachella Canal Lining Project. The Secretary will send a notice of completion of construction to the Parties as each such Project is completed. In accordance with the All-American Canal Lining Project Final Environmental Impact Statement/Environmental Impact Report, the Secretary has determined that 67,700 acre-feet of Colorado River water is available per Calendar Year for allocation upon completion of construction of the All-American Canal Lining Project, if the Project as completed consists of a parallel canal from one mile west of Pilot Knob to Drop 3 connected to the existing canal immediately upstream and downstream from the existing drop structures and interstate highway bridges. In accordance with the Coachella Canal Lining Project Final Environmental Impact Statement/Environmental Impact Report, the Secretary has determined that 26,000 acre-

feet of Colorado River water is available per Calendar Year for allocation upon completion of construction of the Coachella Canal Lining Project, if the Project as completed lines the canal from Siphon 7 to Siphon 14 and from Siphon 15 to Siphon 32. Should a determination be made to construct a parallel canal and new siphons from Siphon 7 to Siphon 32 and should canal diversions not supply marsh/aquatic and desert riparian habitat, the Secretary will determine the amount of water available for allocation upon completion of construction of the Coachella Canal Lining Project. The Parties recognize that such determination could result in a value greater or less than 26,000 acre-feet per Calendar Year.

5.4 Deemed Completion. If for any reason work on the All-American Canal Lining Project is terminated prior to lining the All-American Canal or construction of a new concrete-lined canal from one mile west of Pilot Knob to Drop 3, the Secretary, after consultation with the Parties, shall deem the Project to be complete and will determine the amount of Colorado River water available for allocation from that Project. If for any reason work on the Coachella Canal Lining Project is terminated prior to lining the Coachella Canal or construction of a new concrete lined canal from Siphon 7 to Siphon 14 and from Siphon 15 to Siphon 32, the Secretary shall, after consultation with the Parties, deem the Project to be complete and will determine the amount of water available for allocation from that Project. The Secretary will make each such determination after consultation with the Parties and in accordance with Exhibit A. The Secretary will notify the Parties of any such determination in the notice of completion of construction for each Project and the Project will then be deemed complete.

5.5 Uncontrollable Forces. The amount of water available to be allocated from each of the Projects may be reduced temporarily or permanently as a result of Uncontrollable Forces. In the event of an Uncontrollable Force occurring after the Secretary has issued notice(s) of reach completion or notice(s) of completion or of construction of either or both Projects, the Secretary shall determine, in consultation with the Parties, whether and to what extent the amount of water made available for allocation as a result of the Projects is thereby reduced. If the reduction is temporary, the Secretary shall also provide notice of the amount of water made available for allocation as a result of the Projects as conditions change. The Secretary shall provide notice of such determinations to all Parties.

5.6 Shortage Years. In any Calendar Year after the Secretary has issued notices of completion of construction for the Projects and in which the Secretary determines a Shortage Year exists, the Secretary shall determine, in consultation with the Parties, whether and to what extent the amount of water to be made available for allocation as a result of the Projects is thereby reduced. The Secretary shall provide notice of any such determination to all Parties. Should the amount of water to be made available for allocation as a result of the Projects be less than 93,700 acre-feet per Calendar Year, the term of this Allocation Agreement regarding the allocation of water to SDCWA shall be extended for the number of Calendar Years necessary to deliver to SDCWA an amount of water equal to the Cumulative Shortage Losses. In each particular Extension Year, the Secretary shall deliver to SDCWA 77,700 acre-feet or such lesser amount as will fully replace the remainder of the Cumulative Shortage Losses. Subject only to the determination by the Secretary of a shortage in any Extension Year, the

Secretary shall deliver such water annually until the Cumulative Shortage Losses have been fully satisfied.

5.7 Secretarial Determinations Following the Termination of the Quantification Settlement Agreement. Following the termination of the Quantification Settlement Agreement, the Secretary shall determine the quantity of water available for allocation as a result of the Projects in accordance with Title II, or as otherwise agreed upon by the Parties.

## ARTICLE 6

### Completion of Work

6.1 All-American Canal Lining Project. IID and CVWD agree not to place any additional limitations or conditions on either SDCWA or the Secretary relative to the Projects other than the conditions and limitations specified in this Allocation Agreement. The Projects shall be completed as soon as possible but not later than the deadline set forth in California Water Code Section 12562(a), as amended. The Parties agree that SDCWA shall replace MWD as a voting member of the All-American Canal Lining Committee, as created by and with responsibilities as set forth in the Advance Funding Agreement Among Reclamation, IID and MWD to Provide Funds to Initiate Preliminary Work Necessary for the All-American Canal Lining Project, dated November 12, 2002. IID may assign construction contracts, including Contract Number 4600002001, to SDCWA. Should the State terminate the October 1, 2001 Standard Agreement between IID and the Department of Water Resources (Contract Number 4600002001) because IID failed to perform the covenants therein contained at the time and manner therein provided, IID, CVWD and MWD shall not object to the State proceeding with the work

through an agreement between SDCWA or any other Party and DWR nor in any way hinder or obstruct such work. Reimbursement of All-American Canal obligations shall be made to IID by SDCWA through the Colorado River Management Account in the same manner and form as stated in Section 5.2 of the Agreement Relating to the Construction of a Concrete Lined Canal Parallel to the Existing All-American Canal between IID and MWD dated February 3, 1995. Nothing in this article shall affect or waive any right of CVWD to object to project plans or designs that would interfere with delivery of water to CVWD pursuant to contracts between the United States and CVWD.

6.2 Coachella Canal Lining Project. The June 1, 2001 Standard Agreement between MWD and DWR (Contract Number 4600001474) shall be assigned to CVWD or SDCWA, and MWD shall have no rights or obligations pursuant to the Standard Agreement. Should the State terminate Contract Number 4600001474 because either CVWD or SDCWA fail to perform the covenants therein contained at the time and manner therein provided, MWD shall not object to the State proceeding with the work through an agreement between one of the other Parties and DWR nor in any way hinder or obstruct such work.

## ARTICLE 7

### Allocation of Water to San Luis Rey Settlement Parties

7.1 Obligation to Deliver Water. The Secretary shall deliver Colorado River water available for allocation as a result of the Projects each Calendar Year for the benefit of the San Luis Rey Settlement Parties in accordance with the provisions of this Article 7 and Section 106(c) of Title I.

7.2 Conditions on Delivery of Water. The Secretary's obligation to deliver water to the San Luis Rey Settlement Parties shall be conditioned upon the occurrence of each of the following:

7.2.1 The United States, Escondido, Vista, and the Indian Bands have entered into a Settlement Agreement providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and the Federal Energy Regulatory Commission; and

7.2.2 Stipulated judgments or other appropriate final dispositions have been entered in said proceedings; and

7.2.3 The Secretary has determined the availability of water for allocation in accordance with Article 5 of this Allocation Agreement; and

7.2.4 The San Luis Rey Settlement Parties have advanced funds to pay their proportionate share of Costs for that Calendar Year, as determined and required under Articles 13 and 15 of this Allocation Agreement.

7.3 Point of Delivery. The Secretary shall deliver any water available for the benefit of the San Luis Rey Settlement Parties under this Article 7 to a point or points of delivery along the Colorado River from Lake Havasu to Imperial Dam or, subject to the approval of the Secretary and subject to any additional environmental compliance and applicable federal law, elsewhere along the Colorado River.

7.4 Quantification Settlement Agreement. During the term of the Quantification Settlement Agreement, the Secretary shall deliver water for the benefit of the San Luis Rey Settlement Parties in accordance with Sections 7.4.1 and 7.4.2 herein

and shall account for such deliveries from Priority 3(a) of the priorities set forth in the existing Colorado River water delivery contracts with the Secretary:

7.4.1 Water Resulting from All-American Canal Lining Project. The Secretary shall deliver water available for allocation as a result of the All-American Canal Lining Project for the benefit of the San Luis Rey Settlement Parties as follows:

(a) During construction, the Secretary shall deliver for the benefit of the San Luis Rey Settlement Parties 17 percent of the water determined by the Secretary under Article 5 of this Allocation Agreement to be available for allocation as a result of the All-American Canal Lining Project, up to:

(i) 11,500 acre-feet of water per Calendar Year until such time as the Secretary notifies the Parties of the completion of construction of the Coachella Canal Lining Project; or

(ii) 16,000 acre-feet of water per Calendar Year, in the event and to the extent that a full 4,500 acre-feet of water is not available for allocation from the completed Coachella Canal Lining Project in a Calendar Year.

(b) After the Secretary notifies the Parties of the completion of construction of the All-American Canal Lining Project, the Secretary shall deliver for the benefit of the San Luis Rey Settlement Parties water determined by the Secretary under Article 5 of this Allocation Agreement to be available for allocation as a result of the All-American Canal Lining Project, up to 11,500 acre-feet of water per Calendar Year. After completion of the Coachella Canal Lining Project, the delivery amount from the All-American Canal Lining Project after completion of construction shall be increased, not to exceed a total of 16,000 acre-feet of water per Calendar Year, in the event and to the

extent a full 4,500 acre-feet of water is not available for allocation from the Coachella Canal Lining Project for delivery for the benefit of the San Luis Rey Settlement Parties in that Calendar Year on an acre-foot per acre-foot basis to the extent such water is determined by the Secretary under Article 5 of this Allocation Agreement to be available for allocation as a result of the All-American Canal Lining Project.

7.4.2 Water Resulting from Coachella Canal Lining Project. The Secretary shall deliver water available for allocation as a result of the Coachella Canal Lining Project for the benefit of the San Luis Rey Settlement Parties as follows:

(a) During construction, the Secretary shall deliver for the benefit of the San Luis Rey Settlement Parties 17 percent of the water determined by the Secretary under Article 5 of this Allocation Agreement to be available for allocation as a result of the Coachella Canal Lining Project, up to:

(i) 4,500 acre-feet of water per Calendar Year until such time as the Secretary notifies the Parties of the completion of construction of the All-American Canal Lining Project, or

(ii) 16,000 acre-feet of water per Calendar Year, in the event and to the extent that a full 11,500 acre-feet of water is not available for allocation from the completed All-American Canal Lining Project in a Calendar Year.

(b) After the Secretary notifies the Parties of the completion of construction of the Coachella Canal Lining Project, the Secretary shall deliver for the benefit of the San Luis Rey Settlement Parties water determined by the Secretary under Article 5 of this Allocation Agreement to be available for allocation as a result of the Coachella Canal Lining Project, up to 4,500 acre-feet of water per Calendar Year. After



completion of the All-American Canal Lining Project, the delivery amount from the Coachella Canal Lining Project after completion of construction shall be increased, not to exceed a total of 16,000 acre-feet of water per Calendar Year, in the event and to the extent that a full 11,500 acre-feet of water is not available for allocation from the All-American Canal Lining Project for delivery for the benefit of the San Luis Rey Settlement Parties in that Calendar Year on an acre-foot per acre-foot basis to the extent such water is determined by the Secretary under Article 5 of this Allocation Agreement to be available for allocation as a result of the Coachella Canal Lining Project.

7.5 Post Quantification Settlement Agreement. After the termination of the Quantification Settlement Agreement, the Secretary shall deliver water for the benefit of the San Luis Rey Settlement Parties in accordance with Sections 7.5.1, 7.5.2, and 7.5.3 herein and shall account for the water as Priority 3(a) or Priority 6(a) of the priorities set forth in the Colorado River water delivery contracts with the Secretary, in proportion to the respective priorities associated with the total amount of water flowing in the All-American Canal past Pilot Knob in that Calendar Year.

7.5.1 Prior to the end of each Calendar Year the Secretary shall determine the total amount of the water available for allocation in the next Calendar Year as a result of both Projects. Water available for allocation shall mean an amount equal to the water conserved by the Projects.

7.5.2 During construction, the Secretary shall deliver for the benefit of the San Luis Rey Settlement Parties 17 percent of the water determined by the Secretary to be available for allocation as a result of the All-American Canal Lining Project, not to exceed 17 percent of the total amount of water available for allocation that Calendar Year

as a result of both Projects with the amount of water available for allocation as a result of the All-American Canal Lining Project being a proportionate share of the total amount available for allocation as a result of both Projects, and not to exceed 16,000 acre-feet per Calendar Year. After the Secretary has issued the notice of completion of construction for both Projects, the Secretary shall deliver water available for allocation as a result of the All-American Canal Lining Project for the benefit of the San Luis Rey Settlement Parties in an amount proportionate to the total amount of water available for allocation that Calendar Year from both Projects, not to exceed 16,000 acre-feet of water per Calendar Year.

7.5.3 During construction, the Secretary shall deliver for the benefit of the San Luis Rey Settlement Parties 17 percent of the water determined by the Secretary to be available for allocation as a result of the Coachella Canal Lining Project, not to exceed 17 percent of the total amount of water available for allocation that Calendar Year as a result of both Projects with the amount of water available for allocation as a result of the Coachella Canal Lining Project being a proportionate share of the total amount available for allocation as a result of both Projects, and not to exceed 16,000 acre-feet of water per Calendar Year. After the Secretary has issued the notice of completion of construction for both Projects, the Secretary shall deliver water available for allocation as a result of the Coachella Canal Lining Project for the benefit of the San Luis Rey Settlement Parties in an amount proportionate to the total amount of water available that Calendar Year from both Projects, not to exceed 16,000 acre-feet of water per Calendar Year.

7.6 Unused Water. During the term of this Allocation Agreement, water available to but not delivered for the benefit of the San Luis Rey Settlement Parties and water not available for the benefit of the San Luis Rey Settlement Parties because the conditions specified in Sections 7.2.1, 7.2.2, or 7.2.4 herein have not yet been satisfied, shall be delivered by the Secretary to MWD, subject to IID's right to call on water under Article 9 of this Allocation Agreement. Such deliveries made to MWD because the conditions specified in Sections 7.2.1, 7.2.2, or 7.2.4 herein have not yet been satisfied will be made until all three conditions have been met. After the termination of this Allocation Agreement, the Secretary shall deliver any such unused water in accordance with priorities set forth in then existing contracts for the delivery of Colorado River water.

7.7 Non-Preclusion of Benefits. Nothing in this Article 7 precludes the San Luis Rey Settlement Parties from receiving benefits under other agreements associated with rights under this Allocation Agreement.

## ARTICLE 8

### Post-Quantification Settlement Agreement Allocation To California Contractors

#### 8.1 IID's Call Rights and Obligations to Make Capital Cost Payments.

Commencing upon the termination of the Quantification Settlement Agreement, for the remaining 110 Calendar Years comprising the initial and renewal terms of this Allocation Agreement, the water available for allocation to SDCWA as a result of the Projects shall be subject to IID's call rights and IID's obligation to make Capital Cost Payments to SDCWA in accordance with the provisions of Article 9 below.

8.2 CVWD Waiver of Call Rights. CVWD waives any and all call rights it may have to the water available for allocation to SDCWA as a result of the Projects for the 110-Calendar Year term of this Allocation Agreement and any and all Extension Years.

## ARTICLE 9

### Allocation of Water to IID

#### 9.1 Obligation to Deliver Water During Term of Allocation Agreement.

During the term of this Allocation Agreement, the Secretary shall deliver Colorado River water available for allocation from one or both Projects to IID each Calendar Year, as requested by IID, in 5,000 acre-foot increments, to the extent such water is available after allocation for the benefit of the San Luis Rey Settlement Parties under Article 7 of this Allocation Agreement and subject to the provisions specified in Sections 9.2 through 9.5 and Section 9.7 herein.

9.2 Conditions on Delivery of Water. The Secretary's obligation to deliver water to IID in any given Calendar Year during the term of this Allocation Agreement shall be conditioned upon the occurrence of each of the following:

9.2.1 The Secretary has determined the availability of sufficient water to allocate such for the benefit of the San Luis Rey Settlement Parties under Article 7 of this Allocation Agreement; and

9.2.2 The Secretary has determined under the Criteria for Coordinated Long-range Operation of Colorado River Reservoirs, and any other applicable law or policy, the existence of surplus Colorado River water for that Calendar Year; and

9.2.3 The delivery of such water to IID will have no Effects on MWD;  
and

9.2.4 IID has requested the delivery of water from one or both of the Projects in increments of 5,000 acre-feet of water per Calendar Year by providing written notice to the United States, MWD and SDCWA within 60 days after declaration of a surplus by the Secretary occurring on or before March 1 for either the current Calendar Year or the following Calendar Year, or 30 days after declaration of a surplus by the Secretary occurring on or after March 2 for the current Calendar Year; and

9.2.5 Neither MWD nor SDCWA has informed IID and the United States in writing within 30 days after receipt of IID's notice as to whether IID's election would have one or more Effects on MWD. If either MWD or SDCWA informs IID and the United States that IID's election would have one or more Effects on MWD and provides its information, criteria, and reasoning regarding the Effects on MWD, Reclamation will deliver such water to SDCWA. If IID disputes MWD's or SDCWA's determination, the dispute shall be submitted for arbitration in accordance with Section 17.3 to determine whether to accept or reject MWD's or SDCWA's determination within 30 days following receipt of IID's documentation of the information, criteria, and reasoning on which it relies regarding the Effects on MWD, after having given full consideration to IID and MWD's or SDCWA's documentation. MWD and SDCWA shall have 15 days following the receipt of IID's notice of dispute to provide any additional documentation regarding the Effects on MWD for arbitration. IID shall have 15 days following MWD's or SDCWA's submittal of any additional documentation regarding the Effects on MWD to provide its own additional documentation regarding

new issues associated with the Effects on MWD raised by MWD or SDCWA for arbitration. If the arbitrator finds for IID, IID shall be entitled to divert the increments of water which is the subject of the dispute. If the arbitrator finds for MWD or SDCWA the water shall be delivered to SDCWA. In no event shall the diversion/delivery of water to one Party cause another Party to increase its obligation to pay back water under the Inadvertent Overrun and Payback Policy due to such diversion. In the event water is delivered to SDCWA which is subsequently determined should have been delivered to IID, any obligation for repayment of such water or any related obligation shall be the sole obligation and responsibility of SDCWA.

9.2.6 IID has advanced funds to pay its proportionate share of Costs for any water requested by IID from the Coachella Canal Lining Project, as determined and required under Articles 13 and 14 of this Allocation Agreement and for water from the All American Canal and has adjusted, as applicable, amounts paid or to be paid by SDCWA under Articles 13 and 14 of this Allocation Agreement, with a notice of same to the Secretary.

9.3 Point of Delivery. The Secretary shall deliver any water available to IID under this Article 9 at Imperial Dam.

9.4 Uncontrollable Forces. In the event the Secretary determines that the amount of water available for allocation from one or both Projects is reduced due to an Uncontrollable Force, IID shall forbear from exercising its right to water from each such Project under this Article 9 by a proportionate amount based on the quantity of the reduction in the total amount of water available for allocation to SDCWA from that Project as a result of the Uncontrollable Force.

9.5 Years 46 Through Termination of the Quantification Settlement

Agreement. In addition to IID's rights under Section 9.2, during Years 46 through termination of the Quantification Settlement Agreement, IID may exercise its call rights to obtain an amount not to exceed the lesser of one-half of the water available for allocation to SDCWA as a result of the Projects or 38,850 acre-feet per Calendar Year when the Secretary has determined under the Criteria for Coordinated Long-range Operation of Colorado River Reservoirs, and any other applicable law or policy, the absence of a surplus as defined in Section 9.2.2 for that Calendar Year. The exercise of IID's call rights under this Section shall be in accordance with and subject to the conditions set forth in Sections 9.2.1 and 9.2.6.

9.5.1 To the extent that IID exercises its call rights under this Section 9.5 in non-surplus years, during Years 46 through termination of the Quantification Settlement Agreement this Allocation Agreement shall be extended for the number of Calendar Years necessary for the Secretary to fully deliver to SDCWA a volume of water equal to the volume of IID Call Water. To the extent that IID exercises its Call Rights under Section 9.2 in surplus years in Years 46 through termination of the Quantification Settlement Agreement, this Allocation Agreement shall be extended for the number of Calendar Years necessary for the Secretary to fully deliver a volume of water equal to the volume of IID Call Water, but in no event shall such extension be greater than ten (10) Calendar Years. In each particular Extension Year, the Secretary shall deliver to SDCWA 77,700 acre-feet or such lesser amount as will fully deliver an amount of water equal to the remainder of the IID Call Water. The delivery of an amount of water equal to all IID Call Water shall commence upon the completion of delivery to SDCWA of an

amount of water equal to all Cumulative Shortage Losses pursuant to Section 5.6. IID shall have no right to make calls on the water being delivered to SDCWA by the Secretary in any Extension Year.

9.6 Post-Quantification Settlement Agreement. In addition to IID's rights under Section 9.2, after the termination of the Quantification Settlement Agreement, the Secretary's obligation to deliver water available for allocation as a result of the Projects to IID in any given Calendar Year shall be conditioned upon the occurrence of each of the following:

9.6.1 The Secretary has determined the availability of sufficient water to allocate such for the benefit of the San Luis Rey Settlement Parties under Article 7 of this Allocation Agreement; and

9.6.2 IID has requested the delivery of water from one or both of the Projects by providing written notice to the United States, MWD, SDCWA and CVWD 120 days prior to IID's intended diversion of the first acre-foot of water in the following Calendar Year; and

9.6.3 IID has advanced funds to pay, with a notice of same to the Secretary:

9.6.3.1 its proportionate share of Costs for any water requested by IID from the Coachella Canal Lining Project as determined and required under Articles 13 and 15 of this Allocation Agreement and for water from the All-American Canal and has adjusted, as applicable, amounts of Costs paid or to be paid by SDCWA under Articles 13 and 15; and



9.6.3.2 a Capital Cost Payment to SDCWA of capital costs calculated in accordance with Exhibit B attached hereto and incorporated herein. The State's contributions, which funded the Project's or Projects' conservation of water, shall be deemed to have been made by SDCWA for the purposes of calculating the Capital Cost Payment.

9.6.4 To the extent that IID exercises its call rights under this Section 9.6 in non-surplus years after termination of the Quantification Settlement Agreement, this Allocation Agreement shall be extended for the number of Calendar Years necessary for the Secretary to fully deliver to SDCWA a volume of water equal to the volume of IID Call Water. To the extent that IID exercises its Call Rights under Section 9.2 in surplus years after termination of the Quantification Settlement Agreement, this Allocation Agreement shall be extended for the number of Calendar Years necessary for the Secretary to fully deliver a volume of water equal to the volume of IID Call Water, but in no event shall such extension be greater than ten (10) Calendar Years, minus the number of Calendar Years extended for IID Call Rights in surplus years during Years 46 through the termination of the Quantification Settlement Agreement. In each particular Extension Year, the Secretary shall deliver to SDCWA 77,700 acre-feet or such lesser amount as will fully deliver an amount of water equal to the remainder of the IID Call Water. The delivery of an amount of water equal to all IID Call Water shall commence upon the completion of delivery to SDCWA of an amount of water equal to all Cumulative Shortage Losses pursuant to Section 5.6. IID shall have no right to make calls on the water being delivered to SDCWA by the Secretary in any Extension Year.

9.7 Unused Water. During the term of this Allocation Agreement, water available to but not taken by IID under this Article 9 shall be delivered by the Secretary to SDCWA.

9.8 Non-consensual Termination of the Allocation Agreement. In the event of a non-consensual termination of the Allocation Agreement prior to 110 years from the Effective Date plus any Extension Years due to final judgment of a court of competent jurisdiction on litigation filed by a third party, or a final binding administrative decision of a third party, or for any other reason, the Parties are obligated to enter into a new agreement that effectuates the purposes of this Allocation Agreement for the period from the date of termination through Year 110 plus any Extension Years to the extent legally feasible. The Parties agree to defend this Allocation Agreement against such litigation or administrative proceeding. If CVWD does not immediately enter into such a new agreement with IID, SDCWA and MWD, notwithstanding the provisions of Section 203(c)(5) of Title II, CVWD shall compensate SDCWA for the State and SDCWA's collective participation in the funding of the All-American Canal Lining Project and Coachella Canal Lining Project, respectively. If IID does not immediately enter into such a new agreement with CVWD, SDCWA and MWD, notwithstanding the provisions of Section 203(c)(5) of Title II, IID shall compensate SDCWA for the State and SDCWA's collective participation in the funding of the All-American Canal Lining Project and Coachella Canal Lining Project, respectively. If neither IID nor CVWD immediately enters into such a new agreement with SDCWA and MWD, notwithstanding the provisions of Section 203(c)(5) of Title II, IID and CVWD shall compensate SDCWA for the State and SDCWA's collective participation in the funding of the All-American Canal

Lining Project and Coachella Canal Lining Project, respectively. Such compensation shall be equal to the replacement value of said Project less depreciation. Such replacement value shall be equal to the cost of: preparing environmental documentation, planning, designing, and constructing the Project, assuming the Project is completed on the date of early termination of this Allocation Agreement. Such depreciated value is to be based upon an engineering analysis by the Secretary of the remaining useful life of the Project at the early termination of this Allocation Agreement.

## ARTICLE 10

### Allocation of Water to SDCWA

10.1 Obligation to Deliver Water. During Years 1 through 45 of the Quantification Settlement Agreement, subject only to adjustments required due to either (i) the determination by the Secretary in any year of a shortage or (ii) a Project or Projects is complete and the cumulative amount of water conserved by the Projects is determined to be less than 93,700 acre feet per year, the Secretary shall deliver Colorado River water available for allocation as a result of the Projects to SDCWA each Calendar Year in accordance with Sections 10.1.1 through 10.1.3 herein.

10.1.1 During the construction of each Project, the Secretary shall deliver all water available for allocation from that Project to SDCWA each Calendar Year to the extent water is available for allocation after the allocation of water under Article 7 of this Allocation Agreement and the allocation of water to IID under Article 9 of this Allocation Agreement.

10.1.2 After completion of the All-American Canal Lining Project, the Secretary shall deliver 56,200 acre-feet of water per Calendar Year as a result of that

Project to SDCWA, minus the amount of water used by IID under Article 9 of this Allocation Agreement and minus the amount of water, if any, in excess of 11,500 acre-feet delivered for the benefit of the San Luis Rey Settlement parties pursuant to Section 7.4.1 of this Allocation Agreement.

10.1.3 After completion of the Coachella Canal Lining Project, the Secretary shall deliver 21,500 acre-feet of water per Calendar Year as a result of that Project, or an amount equal to the amount conserved as a result of that Project minus 4,500 acre-feet should a determination be made to construct a parallel canal and new siphons from Siphon 7 to Siphon 32 and should canal diversions not supply marsh/aquatic and desert riparian habitat, to SDCWA, minus the amount of water used by IID under Article 9 of this Allocation Agreement and minus the amount of water, if any, in excess of 4,500 acre-feet delivered for the benefit of the San Luis Rey Settlement parties pursuant to Section 7.4.2 of this Allocation Agreement.

10.2 Conditions on Delivery of Water. The Secretary's obligation to deliver water to SDCWA in any given Calendar Year shall be conditioned upon the occurrence of each of the following:

10.2.1 The Secretary has determined the availability of sufficient water to allocate such for the benefit of the San Luis Rey Settlement Parties under Article 7 of this Allocation Agreement and during the construction of each Project the use of such by IID under Article 9 of this Allocation Agreement.

10.2.2 SDCWA has advanced funds to pay its proportionate share of Costs for any water requested by SDCWA, as determined and required under Articles 13 and 15 of this Allocation Agreement.

10.3 Point of Delivery. The Secretary shall deliver any water available for the benefit of SDCWA under this Article 10 to a point or points of delivery along the Colorado River from Lake Havasu to Imperial Dam or, subject to the approval of the Secretary and subject to any additional environmental compliance, elsewhere.

10.4 Unused Water. During the term of this Allocation Agreement, water available to but not taken by SDCWA under this Article 10 shall be delivered by the Secretary in accordance with the terms of the water delivery contracts which MWD, IID, and CVWD hold with the Secretary.

10.5 Years 46 through Termination of the Quantification Settlement Agreement. During Years 46 through termination of the Quantification Settlement Agreement, subject to the provisions for adjustment in Section 10.1, the Secretary's obligation to deliver water available for allocation as a result of the Projects to SDCWA in any given Calendar Year shall be conditioned upon the occurrence of each of the following:

10.5.1 The Secretary has determined the availability of sufficient water to allocate such for the benefit of the San Luis Rey Settlement Parties under Article 7 of this Allocation Agreement; and

10.5.2 The Secretary has determined the availability of sufficient water to allocate to IID pursuant to Section 9.5 of this Allocation Agreement.

10.6 Post-Quantification Settlement Agreement. After the termination of the Quantification Settlement Agreement, the Secretary's obligation to deliver water available for allocation as a result of the Projects to SDCWA in any given Calendar Year

shall be subject to the adjustments set forth in Section 10.1 and conditioned upon the occurrence of each of the following:

10.6.1 The Secretary has determined the availability of sufficient water to allocate such for the benefit of the San Luis Rey Settlement Parties under Article 7 of this Allocation Agreement; and

10.6.2 The Secretary has determined the availability of sufficient water to allocate to IID pursuant to Section 9.6 of this Allocation Agreement.

## ARTICLE 11

### Colorado River Compact

This Allocation Agreement is subject to the Colorado River Compact of 1922.

## ARTICLE 12

### Canal Lining Projects OM&R Coordinating Committees

12.1 Establishment of Committees. As a means of securing prompt, orderly and effective cooperation and exchange of information and providing consultation, review, recommendation, and/or approval among the Parties in connection with the additional costs of operation, maintenance, and repair of the All-American Canal and the Coachella Canal to be determined by the Secretary under Section 203(b) of Public Law 100-675, the Parties hereby establish the All-American Canal Lining Project OM&R Coordinating Committee ("AAC Committee") and the Coachella Canal Lining Project OM&R Coordinating Committee ("CC Committee"). The AAC Committee and the CC Committee may each also be referred to as "Committee."

12.2 Committee Membership. During the term of the Quantification Settlement Agreement, Committee membership and participation shall be in accordance with

Sections 12.3 and 12.4 herein. After the termination of the Quantification Settlement Agreement, Committee membership with respect to Section 12.3 herein shall include a representative from each entity that is obligated to pay Costs under Article 15 of this Allocation Agreement, together with representatives from IID and CVWD and a selected chairperson as set forth in Section 12.3 herein. The Committees shall continue to include a Reclamation participant as set forth in Section 12.4 herein.

12.3 Voting Members. The AAC Committee shall consist of the following voting members: one member duly authorized and appointed each by IID, CVWD and SDCWA; one member duly authorized and appointed by the San Luis Rey Settlement Parties; and an additional member to be jointly appointed and agreed upon by the Committee members appointed by IID, CVWD, SDCWA, and the San Luis Rey Settlement Parties. The CC Committee shall consist of the following voting members: one member duly authorized and appointed each by CVWD and SDCWA; one member duly authorized and appointed by the San Luis Rey Settlement Parties; and an additional member to be jointly appointed and agreed upon by the Committee members appointed by CVWD, SDCWA, and the San Luis Rey Settlement Parties. All such members shall have technical competence in the operation, maintenance, and repair of major water supply facilities. IID, CVWD, SDCWA, and the San Luis Rey Settlement Parties shall each designate its member within 30 days after the Effective Date of this Allocation Agreement. The AAC Committee member appointed jointly by the IID, CVWD, SDCWA, and San Luis Rey Settlement Parties members shall be the chairperson of the AAC Committee and shall be responsible for presiding over the meetings of the AAC Committee. The CC Committee member appointed by the CVWD, SDCWA, and San

Luis Rey Settlement Parties members shall be the chairperson of the CC Committee and shall be responsible for presiding over the meetings of the CC Committee. Following the initial selection of the members, all changes in the respective Committee's membership shall be made promptly and in such a fashion that it will not interfere with the duties and responsibilities of the respective Committee.

12.4 Reclamation Participation. One non-voting participant on each Committee will be duly authorized and appointed by Reclamation. Reclamation's participant will provide the respective Committee with technical information so that the Committee may make recommendations for Reclamation's consideration.

12.5 Meetings. Each Committee chairperson shall schedule meetings of the chairperson's respective Committee upon the request of any member of that Committee and shall provide each member 15 days written notice of the time, place, and subject of the meeting. The 15-day notice period may be waived if a written waiver is signed by each member of that Committee or by the appearance of the member(s) at the meeting. In the event all members of that Committee are not present, the chairperson shall send a letter with any proposed action to be taken to the absent member(s) by certified mail, postage prepaid, return receipt requested. If the chairperson receives no written protest from the absent member(s) within 30 days of the date of the receipt of the letter, the proposed action shall be final.

12.6 Actions and Recommendations. All actions and recommendations of each Committee shall be set forth in writing consistent with the intent and the rights of the Parties under this Allocation Agreement, and limited to the duties and responsibilities delegated to it in this Allocation Agreement. All actions and recommendations of each



Committee shall be by majority vote of the voting members of that Committee. By mutual written agreement among the Parties, the duties and responsibilities of each Committee may be modified. Each Committee may retain consultants as necessary to perform duties.

## ARTICLE 13

### Determination of Costs

13.1 Determination of Costs. IID and CVWD shall develop and regularly update an operation and maintenance plan for all completed reaches of the All-American Canal Lining Project and Coachella Canal Lining Project, respectively, from which Costs are to be determined. Costs shall be the combined total Net Additional OM&R Costs and Mitigation Costs as determined under this Article 13.

13.2 Net Additional OM&R Costs. Net Additional OM&R Costs shall be determined by calculating actual costs less base costs, but not in any case to be less than zero. Actual costs are the annual operation, maintenance, and repair costs associated with the Project incurred by IID or CVWD in any Calendar Year after the first reach of a Project is transferred to operations status. Base costs are the average annual operation, maintenance, and repair costs for the ten-Calendar Year period prior to the Calendar Year in which the first reach of that Project is transferred to operations status and for the All-American Canal Lining Project are calculated by using the annual sum of Section 4 and 52.78 percent of Section 5 costs. Following the transfer of the first reach of a Project, but prior to the transfer of the completed Project to operation status, a percentage of the base cost shall be utilized for determining the Net Additional OM&R Costs. Such percentage (expressed as a decimal) shall be equal to the length of reach(es) transferred to operation

status for the Project divided by the total length of reaches comprising the completed Project. Such base cost shall be changed by a price index annually. The price index to be utilized shall be determined by the AAC Committee for both the All-American Canal Lining Project and for the Coachella Canal Lining Project. The costs to be considered in IID's and CVWD's procedures, which are to be included in the All-American Canal Lining Project and Coachella Canal Lining Project operation and maintenance plans, respectively, to calculate the Net Additional OM&R Costs shall be limited to the following:

13.2.1 Any operation and maintenance costs, including the cost of insurance, directly resulting from completion of a Project which exceed the benefits derived from increasing the regulating and storage capacity of that canal, and any repair or other corrective action costs which would not have occurred in the absence of that Project in the case of earthquake or other acts of God, including necessary features that are constructed and installed to offset any loss of regulating and storage capacity of the canal resulting from such earthquakes or other acts of God.

13.2.2 To the extent not reimbursable by insurance, any costs and claims of injury, damages and losses suffered by IID, relating to the All-American Canal Lining Project, or by CVWD, relating to the Coachella Canal Lining Project, which are attributable to the operation, maintenance, and repair of the respective Project, and which would not have occurred in the absence of the Project, including legal and other professional services and court costs, unless attributable to the gross negligence or willful misconduct of the agency responsible for the operation, maintenance, and repair of that

canal or the gross negligence or willful misconduct of that agency's officers, employees or agents.

13.2.3 Costs charged by the AAC Committee member jointly appointed and agreed upon by IID, CVWD, SDCWA, and the San Luis Rey Settlement Parties members, costs charged by the CC Committee member jointly appointed and agreed upon by CVWD, SDCWA, and the San Luis Rey Settlement Parties, and the costs charged by consultants retained by the respective Committees following the transfer of a Project or any particular reach thereof to operations status. The Parties do not intend for the Committee Chairperson to devote his or her full time to the respective Committee but rather to limit his or her involvement to preparation for and attendance at meetings, review and approval of documents, periodic field inspection and fiscal audits, and any other activities approved by the respective Committee relating to the respective Project. IID, CVWD, SDCWA, and the San Luis Rey Settlement Parties shall each bear the costs of their respective Committee representative with respect to all Committee activities.

13.3 Mitigation Costs. Mitigation Costs shall be the costs relating to the monitoring, operation, maintenance, and repair of the mitigation features relating to each Project, in accordance with the Environmental Commitment Plan applicable to the Project.

13.4 Estimation of Costs. Within 45 days of the date that water is first made available for allocation from a Project, IID for the All-American Canal Lining Project and CVWD for the Coachella Canal Lining Project shall utilize the procedures developed under Sections 13.1 through 13.3 herein and approved by the Committee and Reclamation to calculate and submit estimated Net Additional OM&R Costs and

estimated Mitigation Costs, including the associated carrying costs, to its respective Committee for the period beginning with the date that Net Additional OM&R Costs began to be incurred through the end of that Calendar Year. For the following Calendar Years, the estimated Net Additional OM&R Costs and the estimated Mitigation Costs shall be prepared prior to September 15th of each Calendar Year for the following Calendar Year.

13.5 Approval of Costs. Within 90 days of the date that water is first made available for allocation as a result of a Project and in the following Calendar Years prior to November 1st, the Committee for that Project shall review the estimated Net Additional OM&R Costs and the estimated Mitigation Costs for the respective period, and either accept them or suggest any modification thereto. If accepted, the Committee shall recommend them to the Secretary for approval and they shall be utilized for billing when approved. If the Committee suggests modifications, IID for the All-American Canal Lining Project and CVWD for the Coachella Canal Lining Project may submit revised estimated Net Additional OM&R Costs and/or Mitigation Costs to the Committee within 120 days of the date that water is first made available for allocation from a Project and November 30th for the following Calendar Years. Within 15 days after receipt, the Committee shall review and either accept the revised estimated Net Additional OM&R Costs and/or revised estimated Mitigation Costs and recommend them for approval by the Secretary or reject them and suggest changes. If IID does not accept the suggestions of the AAC Committee, or if CVWD does not accept the suggestions of the CC Committee, the determination of the Net Additional OM&R Costs and/or the estimated Mitigation Costs shall be subject to the provisions of Article 17 of this Allocation Agreement and

the decision from that process shall be forwarded as a recommendation to the Secretary for approval by the Secretary and when approved shall be utilized for billing purposes for the next Calendar Year. If the Committee does not respond within 45 days after receipt of estimated Net Additional OM&R Costs and Mitigation Costs or within 15 days of receipt of a revised estimate, the Net Additional OM&R Costs and Mitigation Costs contained in IID or CVWD's estimate or revised estimate, as the case may be, shall be forwarded for approval by the Secretary and when approved, utilized for billing purposes for the next Calendar Year.

#### ARTICLE 14

##### Invoicing and Payment of Costs

14.1 Invoicing. Within 135 days of the date that water is first made available for allocation from a Project, and thereafter prior to December 16th of each Calendar Year, IID for the All-American Canal Lining Project, and CVWD for the Coachella Canal Lining Project, shall, by certified mail, send an invoice to the San Luis Rey Settlement Parties and an invoice to SDCWA for their respective proportionate shares, determined in accordance with Articles 13 and 15 of this Allocation Agreement, of the estimated Costs for the following Calendar Year. CVWD shall in any Calendar Year in which IID has exercised its rights under Article 9 of this Allocation Agreement, by certified mail, send an invoice to IID for its respective proportionate share and adjust as applicable SDCWA's share by an equivalent amount, determined in accordance with Articles 13 and 15 of this Allocation Agreement, of the estimated Costs for the following Calendar Year. After the termination of the Quantification Settlement Agreement, SDCWA shall by certified mail send an invoice to IID for the Capital Cost Payment at

least 35 days prior to IID's intended diversion of the first acre-foot of IID Call Water in the following Calendar Year. The invoices shall be submitted to:

San Luis Rey Indian Water Authority  
Attention: General Manager  
P.O. Box 428  
Pauma Valley, California 92061

Vista Irrigation District  
Attention: General Manager  
1391 Engineer Street  
Vista, California 92081

City of Escondido  
Attention: City Manager  
Civic Center Plaza  
201 North Broadway  
Escondido, California 92025

Imperial Irrigation District  
Attention: General Manager  
P.O. Box 937  
Imperial, CA 92251

San Diego County Water Authority  
Attention: General Manager  
4677 Overland Avenue  
San Diego, CA 92123

14.2 Payment. The San Luis Rey Settlement Parties, SDCWA and IID, shall each pay the amounts of the first invoices received with respect to each Project within 45 days of receipt of its respective invoice. Thereafter, the San Luis Rey Settlement Parties, SDCWA and IID shall each pay the amount of its respective invoice prior to the Due Day. In the event that any payment is delinquent, an additional charge equal to two percent of such delinquent payment for each month or portion thereof that such payment remains delinquent shall be assessed, and the delinquent Party shall pay such charge in addition to the amount of such delinquent payment. Notwithstanding the above, if the

total period of delinquency does not exceed five business days, the additional charge shall be equal to one percent of such delinquent payment. Invoices for delinquencies including additional charges shall be mailed not later than the tenth day following the Due Day.

14.3 Deposit of Funds. IID for the All-American Canal Lining Project and CVWD for the Coachella Canal Lining Project shall promptly deposit the funds received from the San Luis Rey Settlement Parties in a separate legally permissible interest-bearing account, and shall promptly deposit the funds received from SDCWA in another separate legally permissible interest-bearing account. CVWD shall promptly deposit the funds received from IID in a third separate legally permissible interest-bearing account. Each account shall be opened at a bank or trust company having trust assets of at least five hundred million dollars (\$500,000,000). Eligibility for deposit of the funds received shall be limited to those financial institutions that maintain a rating equivalent to a Keefe Bank Watch Service of "B/C" or better. Interest on the funds on deposit in such accounts shall be retained therein and used to pay Costs. IID and CVWD shall make withdrawals from the accounts only for approved Costs.

14.4 Unanticipated Costs. If the amount billed by IID or CVWD and paid by the San Luis Rey Settlement Parties, SDCWA, and IID in any Calendar Year in which IID has exercised its rights under Article 9 of this Allocation Agreement, is insufficient to cover the Costs for the Calendar Year invoiced, IID for the All-American Canal Lining Project or CVWD for the Coachella Canal Lining Project shall submit a revised estimate of Costs to the applicable Committee for the balance of said period which reflects the unanticipated costs. Within 15 days thereafter, the Committee shall review the unanticipated costs and either accept them or suggest any modification thereto. If

accepted, the Committee shall recommend them to the Secretary for approval. If IID for the All-American Canal Lining Project or CVWD for the Coachella Canal Lining Project does not accept any modification suggested by the Committee, the determination of the Costs shall be subject to the provisions of Article 17 of this Allocation Agreement and the result of that process shall be forwarded to the Secretary for approval. Within 7 days following approval of the revised estimate of Costs by the Secretary, IID or CVWD as the case may be shall send invoices by certified mail to appropriate entities reflecting the increased costs, and those entities shall pay the invoiced amounts within 30 days after receipt. If the 30th day falls on a Saturday, Sunday or a State legal holiday, the due day shall be the next succeeding business day.

14.5 Payment of Costs in Dispute by a Party. If a Party disputes an amount in an invoice, within 30 days of receipt of the invoice, payment of the undisputed amount and 50 percent of the disputed amount shall be made. The determination of the propriety of the disputed amount shall be subject to the provisions of Article 17 of this Allocation Agreement. In the event that the disputed amount is determined to be an improper charge, the 50 percent of the disputed amount paid shall be returned, together with interest earned. In the event that the disputed amount is determined to be a proper charge, the 50 percent of the disputed amount unpaid shall be paid with interest as if it were a delinquent payment.

14.6 Receipt of Excess Payment If the amounts paid by the San Luis Rey Settlement Parties, SDCWA and IID pursuant to all invoices during a Calendar Year, together with the interest earned on the funds, are in excess of the actual costs to date for that Calendar Year and the remaining projected costs for the Calendar Year, as projected



on December 1st of that Calendar Year, IID for the All-American Canal Lining Project and CVWD for the Coachella Canal Lining Project shall credit the excess (including both principal and interest) against the first payments due in the following Calendar Year, and shall show such credit on the invoices sent. To the extent the excess amount exceeds the first invoices sent, the amount of the remaining excess funds shall be credited to successive payments due until exhausted, and shall show such credits on the invoices sent. Any funds remaining in these accounts upon termination of rights to receive water under this Allocation Agreement shall be refunded within 30 days.

## ARTICLE 15

### Obligation to Pay and Allocation of Project Costs

15.1 Obligation to Pay. During the term of the Quantification Settlement Agreement, the San Luis Rey Settlement Parties, SDCWA, and, to the extent IID exercises its rights to water allocated from the Coachella Canal Lining Project, IID, shall pay the Costs determined to be the respective share of each such entity in accordance with this Article 15 of this Allocation Agreement. After the termination of the Quantification Settlement Agreement, Costs will continue to be allocated in accordance with the procedures of this Article 15. The Secretary shall not deliver water allocated as a result of the Projects to any entity except after:

15.1.1 *Payment of Costs to IID for the All-American Canal Lining Project and to CVWD for the Coachella Canal Lining Project, as such Costs are allocated in this Article 15 and in accordance with the invoicing and payment procedures set forth in Article 14 of this Allocation Agreement; and*

15.1.2 Payment of Capital Cost Payments to SDCWA, as applicable under Article 9 of this Agreement, pursuant to Exhibit B.

15.2 Allocation of Costs. Each entity shall pay its proportionate share of the Costs.

15.2.1 The Costs attributable to each entity for water allocated to or for the benefit of that entity from each Project will be based on the ratio of the amount of water made available to or for the benefit of that entity from a Project and the total amount of water conserved on a Calendar Year basis from that Project. The ratio for each Project shall be multiplied by the Costs for that Project to determine the entity's proportionate share of the Costs for that Project.

15.2.2 Should a Party not pay or pay an insufficient amount of the Costs within 30 days of the Due Day, IID for the All-American Canal and CVWD for the Coachella Canal shall send a Notice of Default by certified mail, return receipt requested, to the defaulting entity. If within five business days of receipt of that Notice of Default by the defaulting entity full payment has not been received, IID for the All-American Canal Lining Project and CVWD for the Coachella Canal Lining Project shall, during the term of the Quantification Settlement Agreement, inform the United States and SDCWA on the sixth business day following receipt of the Notice of Default by the defaulting entity, and the Secretary shall deliver an amount of water equal to the amount of water for which the Costs have not been paid to SDCWA, upon payment by SDCWA within 30 days of SDCWA's receipt of the notice from IID or CVWD as the case may be. After the term of the Quantification Settlement Agreement, IID and CVWD shall inform the United States, SDCWA, and such other entity or entities as will then be entitled to the

delivery of this water of its availability and, upon full payment of the unpaid Costs within 30 days of that entity's receipt of the notice from IID or CVWD, the United States shall deliver the water to that entity or entities entitled to the delivery including, if applicable, delivery to SDCWA. Any dispute as to the entity or entities entitled to the delivery of the water shall be subject to the provisions of Article 17 of this Allocation Agreement.

15.2.3 The Secretary shall not deliver water to an entity that is not a Party unless IID or CVWD as the case may be has notified the Secretary that all Costs, including a revised estimate of Costs approved by the Secretary under Section 13.5 herein, to be paid by that entity have been paid. Should an entity that is not a Party not pay or pay an insufficient amount of the Costs within 30 days of the Due Day, IID for the All-American Canal and CVWD for the Coachella Canal shall send a Notice of Default by certified mail to the defaulting entity. If within five business days of receipt of that Notice of Default by the defaulting entity full payment has not been received, IID for the All-American Canal Lining Project and CVWD for the Coachella Canal Lining Project shall, during the term of the Quantification Settlement Agreement, inform the United States and SDCWA on the sixth business day following receipt of the Notice of Default by the defaulting entity, and the Secretary shall deliver an amount of water equal to the amount of water for which the Costs have not been paid to SDCWA, upon payment by SDCWA within 30 days of SDCWA's receipt of the notice from IID or CVWD as the case may be. After the term of the Quantification Settlement Agreement, IID and CVWD shall inform the United States, SDCWA, and such other entity or entities as may then be entitled to the delivery or exchange of this water of its availability and, upon full payment of the unpaid Costs within 30 days of that entity's receipt of the notice from IID or

CVWD, the United States shall deliver the water to that entity or entities entitled to the delivery, or, if applicable, to SDCWA. Any dispute as to the entity or entities entitled to the delivery of the water shall be subject to the provisions of Article 17 of this Allocation Agreement.

15.2.4 In any Calendar Year in which an entity declines to take a portion of water made available for allocation to or for the benefit of that entity as a result of the Projects, and another entity is entitled to and elects to receive and pay for that amount of water, the first entity shall be relieved of its obligation to pay the Costs for that amount of water but only to the extent that the Costs are paid by the second entity.

15.2.5 No entity shall be required to pay IID the Costs associated with water resulting from the All-American Canal Lining Project which is allocated to IID, and no entity shall be required to pay CVWD the Costs associated with water resulting from the Coachella Canal Lining Project which is allocated to CVWD.

## ARTICLE 16

### Audit and Limitation on Use of Funds

16.1 Audit of Costs. Annually, upon 10 days' written notice, the San Luis Rey Settlement Parties, and/or SDCWA may audit or cause to be audited records of expenditures of funds provided by the San Luis Rey Settlement Parties and/or SDCWA, respectively. IID shall keep separate records of such funds and expenditures thereof for the Costs associated with the All-American Canal Lining Project, in accordance with generally accepted accounting practice. CVWD shall keep separate records of such funds and expenditures thereof for the Costs associated with the Coachella Canal Lining Project, in accordance with generally accepted accounting practices. Should the audit

reveal that the San Luis Rey Settlement Parties and/or SDCWA paid an amount(s) greater than that which was proper, IID and/or CVWD shall refund within 30 days the difference between the amount paid and the proper amount, with accrued interest earned. Unless the San Luis Rey Settlement Parties and/or SDCWA challenge the expenditures within one Calendar Year after submittal of the records by IID and/or CVWD, respectively, the expenditures shall be deemed to have been accepted by the San Luis Rey Settlement Parties and/or SDCWA, respectively.

16.2 Limitation of Use of Funds. Funds provided by the San Luis Rey Settlement Parties and/or SDCWA under this Allocation Agreement shall not be used by IID and/or CVWD for negotiations with the San Luis Rey Settlement Parties and/or SDCWA or legal fees incurred by IID and/or CVWD to resolve disputes with the San Luis Rey Settlement Parties and/or SDCWA regarding interpretation or enforcement of this Allocation Agreement.

## ARTICLE 17

### Dispute Resolution

17.1 Informal Resolution. The Parties shall attempt to resolve any dispute relating to this Allocation Agreement through a meeting of the Parties. A Party requesting resolution of a dispute shall send written notice to all other Parties, which shall set forth in detail the position of the Party requesting resolution. Within 30 days of the notice being sent the Regional Director of Reclamation's Lower Colorado Region, the General Manager of SDCWA, the General Manager-Chief Engineer of CVWD, the General Manager of IID, the Utilities Director of Escondido, the General Manager of Vista, and the General Manager of the Indian Water Authority, and the Chairperson of

each of the Indian Bands, or each of their respective authorized representatives shall meet and attempt to resolve the dispute by a unanimous decision. In the event that all Parties' representatives are not present, a letter with the proposed action, signed by all the attending Parties' representatives, shall be sent to each absent Party's representative by certified mail, postage prepaid, return receipt requested. If no written protest from an absent Party's representative is sent to the other Parties within 30 days of the date of receipt of the letter with the proposed action, the decision shall be deemed unanimous and become final. Any written protest shall be mailed to each other Party's representative, and to each of the Parties by certified mail, postage prepaid, return receipt requested. Each Party shall bear its own expense for the dispute resolution process. Any resolution shall be in writing and be binding on the Parties. To the extent the dispute is not resolved by the Parties' representatives within 40 days of the conclusion of the dispute resolution meeting, the Parties shall try in good faith to settle the dispute in accordance with Section 17.2 herein before resorting to litigation.

17.2 Mediation To the extent any dispute other than a dispute involving the determination of Costs to which the United States is not a party is not resolved by a meeting or following the meeting written communication among the Parties' representatives in accordance with Section 17.1 herein, the non-federal Parties shall try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, each party to bear its own costs.

17.3 Arbitration Any dispute to which the United States is not a party involving the determination of Costs shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association except as

otherwise provided herein if not resolved under Section 17.1 herein, each party to bear its own costs. Any dispute involving MWD's or SDCWA's determination that IID's election under Section 9.2.5 would result in Effects on MWD shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association Expedited Procedures. Judgment upon the award rendered by the arbitrators (arbitrator in Expedited Procedures) may be entered in any court having jurisdiction thereof.

17.3.1 Positions on Issues. Within 15 days after receipt of a notice for request for arbitration, MWD or SDCWA (if the dispute involves Effects on MWD), the San Luis Rey Settlement Parties, CVWD (if the dispute involves the Costs for the Coachella Canal Lining Project), IID (if the dispute involves Costs for the Coachella Canal Lining Project which IID is obligated to pay or has paid), and IID (if the dispute involves the Costs for the All-American Canal Lining Project) shall endeavor to agree such that only two positions on each issue exist. They shall endeavor to align themselves into two groups according to the positions taken on each issue. Each group shall select one person to act as arbitrator within 45 days after the receipt of a notice for request for arbitration. If they are unable to align themselves into two groups, the two arbitrators shall be selected pursuant to the Commercial Arbitration Rules within 60 days after the receipt of a notice of request for arbitration. On each issue to be resolved, each of the two groups shall, within 75 days after the receipt of a notice of request for arbitration select one arbitrator and shall notify the other group in writing of its selection. The two arbitrators so selected shall select a third arbitrator within 30 days following the selection of the last of the two arbitrators. If the arbitrators selected by the groups are unable or

fail to agree upon a third arbitrator, the American Arbitration Association shall select the third arbitrator. The third arbitrator shall act as chairperson of the arbitration panel and shall be independent from all Parties, having no past, present, or pending relationship with any of the Parties unless unanimously consented thereto by the Parties to the dispute.

17.3.2 Arbitration Limitation The arbitration shall be limited to the consideration and resolution of the issue(s) submitted. For arbitration regarding Effects on MWD, the arbitrator shall rely only on the documentation submitted by MWD, SDCWA and IID regarding Effects on MWD in reaching a decision. The panel of arbitrators, or in the case of arbitration regarding Effects on MWD the arbitrator, shall not rewrite, change, or amend this Allocation Agreement.

17.3.3 Award of Arbitrators and Allocation of Expenses of Arbitration  
Except for Arbitration Regarding Effects on MWD. The award of the arbitrators shall be in writing, shall be accompanied by a reasoned opinion, shall be signed by at least two of the arbitrators, and shall be rendered within 30 days after the arbitration hearing. Each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. The administrative fees of arbitration and arbitrators' fees shall be borne 50 percent by the respective district, SDCWA or IID, which is obligated to pay or has paid the Costs which are the subject of the arbitration, 33 1/3 percent by CVWD—if the dispute involves the Costs for the Coachella Canal Lining Project, 33 1/3 percent by IID—if the dispute involves the Costs for the All-American Canal Lining Project, and 17 percent by the San Luis Rey Settlement Parties.



17.3.4 Award of Arbitrator and Allocation of Expenses of Arbitration

Regarding Effects on MWD. The award of the arbitrator shall be in writing, shall be accompanied by a reasoned opinion, shall be signed by the arbitrator, and shall be rendered within 14 days after the arbitration hearing. Each party shall bear its own expenses. The administrative fees of arbitration and arbitrator's fees shall be borne 50 percent by SDCWA and 50 percent by IID.

17.4 Disputes Involving the United States. Disputes under this Allocation Agreement involving the United States shall be presented first to the Regional Director of the Lower Colorado Region of the Bureau of Reclamation. The Regional Director shall be deemed to have denied the other Party's or Parties' contention(s) or claim(s) if the Regional Director does not act upon those contention(s) or claim(s) within 30 days of their having been presented. The decision of the Regional Director shall be subject to appeal to the Commissioner by a notice of appeal accompanied by a statement of reasons filed with the Commissioner within 30 days after such decision. The Commissioner shall be deemed to have denied the appeal if the Commissioner does not act upon the appeal within 30 days of filing. The decision of the Commissioner shall be subject to appeal to the Secretary by a notice of appeal accompanied by a statement of reasons filed with the Secretary within 30 days after such decision. The Secretary shall be deemed to have denied the appeal if the Secretary does not act upon the appeal within 30 days of filing. The decision of the Secretary may then be appealed to the federal courts to the extent permitted by and in accordance with federal law.

## ARTICLE 18

### Counting Days

Days shall be counted by excluding the first day and including the last day, unless the last day is not a business day, and then it shall be excluded. Any act required by this Allocation Agreement to be performed by a certain day shall be timely performed if it is completed before 5:00 p.m. Pacific Time on that date, unless otherwise specified. If the day for performing any obligation under this Allocation Agreement is not a business day, then the time for performing that obligation shall be extended to 5:00 p.m. Pacific Time on the next business day.

## ARTICLE 19

### Liability and Indemnity

19.1 Liability. No Party to this Allocation Agreement nor any of its directors, officers, agents, employees or authorized volunteers shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by any other Party to this Allocation Agreement in connection with any work, obligation, authority, or any criteria arising out of this Allocation Agreement.

19.2 Indemnity. Each non-federal Party to this Allocation Agreement shall defend, indemnify, and hold each other Party to this Allocation Agreement, its directors, officers, agents, employees and authorized volunteers, harmless against all liability, claims, or other loss, and whether direct, or indirect or consequential, which may occur as a result of activities conducted by it under this Allocation Agreement, together with reasonable attorney's fees and costs and expenses incurred by a Party in negotiating, settling, defending, or otherwise protecting against such liability, claims, and loss.

## ARTICLE 20

### Non-waiver

None of the provisions of this Allocation Agreement shall be considered waived by any Party, except when such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Allocation Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or its relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

## ARTICLE 21

### No Third-party Rights

This Allocation Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns. Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Allocation Agreement.

## ARTICLE 22

### Uncontrollable Forces

None of the Parties shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of an Uncontrollable Force. Any Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall give prompt written notice of such fact to the Party to whom the obligation is owed and shall exercise due diligence to remove such inability with all reasonable dispatch.

## ARTICLE 23

### Remedies Cumulative

The Parties do not intend that any right or remedy available to a Party on the breach of any provision under this Allocation Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedies provided in this Allocation Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this Allocation Agreement or otherwise.

## ARTICLE 24

### General Settlement Provisions; No Admission of Settlement Terms;

#### Reservation of Rights and Claims

IID, CVWD, and MWD do not agree on the nature or scope of their relative rights to the delivery, use, or transfer of Colorado River water. IID, CVWD, MWD and SDCWA acknowledge that this Allocation Agreement is, in fact, a settlement and thus may not be used for any purpose in any judicial, legislative or administrative proceeding, and may not be used by IID, CVWD, MWD or SDCWA in any future attempt to reallocate water rights or to reorder the priorities of IID, CVWD, and/or MWD upon the termination of the Quantification Settlement Agreement. Subject to the provisions of this Allocation Agreement which compromise such matters, the legal rights, duties, obligations, powers and claims of each Party are preserved and may be acted upon by any Party during the term of this Allocation Agreement.

## ARTICLE 25

### Representations and Warranties

25.1 Legal Power and Authority. Each Party warrants that it has the authority to enter into this Allocation Agreement and to perform its obligations hereunder and that the person executing this Allocation Agreement on behalf of that Party has the authority to do so.

25.2 Valid and Binding Agreement. This Allocation Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.

## ARTICLE 26

### Governing Law

This Allocation Agreement shall be interpreted, governed by and construed under the laws of the State and any applicable Federal law, including Public Law 100-675 as amended. In case of conflict between Federal and State law, Federal law controls.

## ARTICLE 27

### Binding Effect

This Allocation Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

## ARTICLE 28

### Interrelationship with Existing Agreements

Existing contracts and agreements entered into by the Secretary for the delivery of Colorado River water shall remain in full force and effect in accordance with their terms

and, with this Allocation Agreement, shall govern the delivery and use of Colorado River water allocated as a result of the Projects. Neither the Secretary nor the San Luis Rey Settlement Parties are party to the Quantification Settlement Agreement, and the rights and responsibilities of the Secretary and the San Luis Rey Settlement Parties with respect to the allocation of water conserved by the All American Canal Lining Project and the Coachella Canal Lining Project are as set forth in this Allocation Agreement and are not affected by the Quantification Settlement Agreement.

#### ARTICLE 29

##### Modification

This Allocation Agreement may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by all Parties.

#### ARTICLE 30

##### Ambiguities

Each Party and its counsel have participated fully in the drafting, review and revision of this Allocation Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Allocation Agreement, including any amendments or modifications.

#### ARTICLE 31

##### Authorized Representatives

Each Party shall designate an authorized representative in writing within 30 days following the execution of this Allocation Agreement. The authorized representatives

shall serve as communication links among the Parties on all matters relating to this Allocation Agreement.

## ARTICLE 32

## Notices

32.1 Forms of Notice and Addresses for Notice. All notices, requests, demands, or other communications under this Allocation Agreement must be in writing and sent to the addresses of each entity or Party set forth below. Notice will be sufficiently given for all purposes as follows:

*Personal Delivery.* When personally delivered to the recipient. Notice is effective on delivery.

*Certified Mail.* When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.

*Overnight Delivery.* When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

*Facsimile Transmission.* Notice is effective on receipt, provided that the facsimile machine provides the sender a notice that indicates the transmission was successful, and that a copy is mailed by first-class mail on the facsimile transmission date.

Addresses for purpose of giving notice are as follows:

If to the United States of America: Department of the Interior  
Attention: Secretary of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240-0002

cc: Bureau of Reclamation  
Lower Colorado Region  
Attention: Regional Director  
P.O. Box 61470  
Boulder City, NV 89006-1470

Bureau of Reclamation  
Yuma Area Office  
Attention: Area Manager  
7301 Calle Agua Salada  
Yuma, AZ 85365

If to MWD:  
by personal service or  
overnight delivery:

The Metropolitan Water District  
of Southern California  
Attention: Chief Executive Officer  
700 North Alameda Street  
Los Angeles, California 90012-2944

by U.S. mail:

P.O. Box 54153  
Los Angeles, California 90054-0153

If to CVWD:  
by personal service or  
overnight delivery:

Coachella Valley Water District  
Attention: General Manager-Chief  
Engineer  
Highway 111 and Avenue 52  
Coachella, California 92236

by U.S. mail:

P.O. Box 1058  
Coachella, California 92236

If to IID:  
by personal service or  
overnight delivery:

Imperial Irrigation District  
Attention: General Manager  
333 E. Barioni Boulevard  
Imperial, California 92251

by U.S. mail:

P.O. Box 937  
Imperial, California 92251



cc:	John P. Carter, Esq. Horton, Knox, Carter & Foote 895 Broadway Suite 101 El Centro, CA 92243
If to SDCWA	San Diego County Water Authority  Attention: General Manager 4677 Overland Avenue San Diego, CA 92123
If to the City of Escondido:	City of Escondido Attention: City Manager Civic Center Plaza 201 North Broadway Escondido, California 92025
If to Vista Irrigation District:	Vista Irrigation District Attention: General Manager 1391 Engineer Street Vista, California 92081
If to San Luis Rey River Indian Water Authority:	San Luis Rey River Indian Water Authority Attention: General Manager P. O. Box 428 1010 Pauma Reservation Road Pauma Valley, California 92061
If to La Jolla Band Of Mission Indians:	La Jolla Band of Mission Indians Attention: Chairperson Star Route 158 22000 Highway 76 Valley Center, CA 92082
If to Pala Band of Mission Indians:	Pala Band of Mission Indians Attention: Chairperson P.O. Box 43 35955 Pala Temecula Road Pala, CA 92059-0043

If to Pauma Band  
of Mission Indians:

Pauma Band of Mission Indians  
Attention: Chairperson  
P.O. Box 369  
1010 Pauma Reservation Road  
Pauma Valley, California 92061

If to Rincon Band  
of Mission Indians

Rincon Band of Mission Indians  
Attention: Chairperson  
P.O. Box 68  
33750 Valley Center Road  
Valley Center, CA 92082

If to San Pasqual Band  
of Mission Indians:

San Pasqual Band of Mission Indians  
Attention: Chairperson  
P.O. Box 365  
27458 North Lake Wohlford Road  
Valley Center, California 92082

32.2 Refused, Unclaimed or Undeliverable Notices. A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

32.3 Change of Address. Any Party or entity may change its address for notice by written notice given to the other in the manner provided in Section 32.1 herein.

### ARTICLE 33

#### Judicial Remedies Not Foreclosed

Except as provided in Article 17 of this Allocation Agreement nothing herein shall be construed (1) as depriving any Party from pursuing and prosecuting any remedy in any appropriate court of the United States or the State which would otherwise be

available to such Party, or (2) as depriving any Party of any defense thereto which would otherwise be available.

#### ARTICLE 34

##### Availability of Information

All information and data obtained or developed with the performance of duties mentioned in this Allocation Agreement shall be available upon request to a Party, except where prohibited by law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.

#### ARTICLE 35

##### Time of the Essence

Time is of the essence of and under this Allocation Agreement and of every provision thereof.

#### ARTICLE 36

##### Relation to Reclamation Law

Pursuant to Section 209 of Title II, this Allocation Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97-293, 93 Stat. 1263).

#### ARTICLE 37

##### Counterparts

This Allocation Agreement may be executed in counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

## ARTICLE 38

### Additional Parties

38.1 Additional Parties. The Parties agree that after the initial execution of this Allocation Agreement that additional entities may become Parties to this Allocation Agreement in the manner set forth in this Article 38.

38.2 PVID. PVID may become a Party to this Allocation Agreement by adopting a resolution giving PVID's consent to the delivery of water available for allocation as a result of the Projects in accordance with the terms of this Allocation Agreement and acknowledgment of the Costs associated with that water and delivering certified copies of the resolution in a quantity commensurate with the number of then existing Parties to the Secretary. Upon receipt of these documents by the Secretary, PVID shall be deemed a Party to this Allocation Agreement and bound by its terms. The Secretary shall promptly distribute the certified copies to all then existing Parties to the Allocation Agreement.

## ARTICLE 39

### Obligations of United States

All obligations of the United States under this Allocation Agreement are subject to the availability of appropriations made by the Congress.

IN WITNESS THEREOF, the Parties have hereunto set their hands on the date first above written.

THE UNITED STATES OF AMERICA

By: Gale Norton

Approved as to form:

By: W. F. [Signature]

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By: [Signature]  
Chief Executive Officer

Approved as to form:

By: [Signature]

COACHELLA VALLEY WATER DISTRICT

By: [Signature]  
General Manager-Chief Engineer

Approved as to form:

By: [Signature]

IMPERIAL IRRIGATION DISTRICT

By: [Signature]  
General Manager

Approved as to form:

By: [Signature]

SAN DIEGO COUNTY WATER AUTHORITY

By: [Signature]  
General Manager

Approved as to form:

By: [Signature]

CITY OF ESCONDIDO

By: [Signature]  
Mayor

By: [Signature] Deputy  
City Clerk

Approved as to form:

By: [Signature]

VISTA IRRIGATION DISTRICT

By: [Signature]  
General Manager

By: [Signature]  
President, Board of Directors

Approved as to form:

By: [Signature]

SAN LUIS REY RIVER INDIAN WATER AUTHORITY

By: [Signature]  
General Manager

Vice President

Approved as to form:

By: [Signature]

LA JOLLA BAND OF MISSION INDIANS

By: [Signature] Chairperson

Approved as to form:

By: [Signature]

PALA BAND OF MISSION INDIANS

By: [Signature] Chairperson

Approved as to form:

By: [Signature]

PAUMA BAND OF MISSION INDIANS

By: [Signature] Chairperson

Approved as to form:

By: [Signature]

RINCON BAND OF MISSION INDIANS

By: [Signature] Chairperson (K)

Approved as to form:

By: [Signature]

SAN PASQUAL BAND OF MISSION INDIANS

By: [Signature] Chairperson

Approved as to form:

By: [Signature] (K)

## EXHIBIT A

### Amount of Water Conserved by Lining Each of the Reaches of the All-American Canal and Coachella Canal

#### **Water Available for Allocation as a Result of All-American Canal Lining Project**

Present seepage and estimated yield based on Table III-1 and Table III-2 of the March 1994 All American Canal Lining Project Final Environmental Impact Statement/Environmental Impact Report

(acre-feet per Calendar Year)

Canal Reach	Present Seepage	Lined Leakage	Reduced Evaporation	Other Adjustments*	Water Yield
Rock Section 2 to Drop 1	59,200	9,200	(850)	0	50,850
Drop 1 to Drop 2	17,900	3,500	(300)	0	14,700
Drop 2 to Drop 3	7,400	3,600	(350)	(2,000)	2,150
	84,500	16,300	(1,500)	(2,000)	67,700

\*Estimated amount of All-American Canal Lining Project-induced seepage below Drop 3.

Should one or more reaches be substantially completed on a date other than on December 31 of a Calendar Year, the amount of All-American Canal Lining Project Conserved Water which will result for the remainder of that Calendar Year will be determined by calculating the ratio of the remaining amount of water projected to flow in the All-American Canal past Pilot Knob for that Calendar Year to the amount of water which has flowed in the All-American Canal past Pilot Knob for that Calendar Year as of the date of transfer to operation status plus the remaining amount of water projected to flow in the All-American Canal past Pilot Knob for the remainder of that Calendar Year and multiplying that ratio by the Water Yield.



## Water Available for Allocation as a Result of Coachella Canal Lining Project

Seepage by Reach and Reduction per December 1993 Draft Environmental Impact Statement/Report (EIS/EIR) as modified by the September 2000 Draft EIS/EIR [1]

(acre-feet per Calendar Year)				
Siphon to Siphon Reach	Reach Length (feet)	Reach Seepage	Reach Lining Leakage	Reach Net Seepage Reduction
7-8	4,391.00	137	14	123
8-9	7,263.00	226	23	203
9-10	6,588.80	205	22	183
10-11	4,413.08	137	14	123
11-12	8,157.90	253	26	227
12-13	10,696.00	332	34	298
13-14	6,125.99	190	19	171
Unit A	47,635.77	1,480	150	1,330
Subtotal				
[2] 14-15	7,569.00	643	34	609
15-16	8,913.00	757	40	717
16-17	7,152.80	607	32	575
17-18	7,458.90	633	34	599
Unit B	31,093.70	2,640	140	2,500
Subtotal				
18-19	5,617.20	1,659	81	1,578
19-20	6,508.00	1,923	95	1,828
20-21	5,797.00	1,713	84	1,629
21-22	8,652.00	2,556	125	2,431
22-23	12,048.29	3,559	175	3,384
Unit C	38,622.49	11,410	560	10,850
Subtotal				
23-24	14,165.58	5,215	196	5,019
24-25	5,379.08	1,980	75	1,905
25-26	7,938.00	2,922	110	2,812
26-27	4,657.00	1,715	64	1,651
27-28	2,321.00	855	32	823
[3] 28-29+	10,357.00	3,813	143	3,670
Unit D	44,817.66	16,500	620	15,880
Subtotal				
[3] 29+-30	11,862.53	184	17	167

30-31	6,498.00	100	10	90
31-32	2,313.00	36	3	33
Unit E	20,673.53	320	30	290
Subtotal				

Total	182,843.15	32,350	1,500	30,850
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[1] The total estimated seepage reported in the 1993 and 2000 Draft EIS/EIRs are the same. Estimated seepage per Hydrological Unit from Table III-1 of the 1993 Draft EIS/EIR. Estimated Reach Lining Leakage from 1993 Draft EIS/EIR adjusted by adding an additional 10 acre-feet to Hydrologic Unit A in order for total leakage to equal 1,500 acre-feet as reported in the September 2000 Draft EIS/EIR. Distribution of hydrologic unit subtotals among the siphon defined reaches estimated by MWD.

[2] Completed in March 1991, the reach between Siphons 14 and 15 was lined in-place with concrete. Seepage from this reach is included in the totals.

[3] The hydrological subunit from Siphons 23 to 29 actually ends 2,500 feet downstream of Siphon 29.

Should one or more reaches be substantially completed on a date other than on December 31 of a Calendar Year, the amount of water which will result for the remainder of that Calendar Year will be determined by calculating the ratio of the remaining amount of water projected to flow in the Coachella Canal past Siphon 7 for that Calendar Year to the amount of water which has flowed in the Coachella Canal past Siphon 7 for that Calendar Year as of the date of transfer to operation status plus the remaining amount of water projected to flow in the All-American Canal past Pilot Knob for the remainder of that Calendar Year and multiplying that ratio by the Reach Net Seepage Reduction.

## EXHIBIT B

### Capital Cost Payments

If any part of the water available for allocation as a result of the Project or Projects is proposed to be used by IID following termination of the Quantification Settlement Agreement, then, pursuant to Section 9.6.3 of this Allocation Agreement, IID shall reimburse SDCWA an amount of money determined by the following formula:

$$R = (A/CW) \times [CRF \times (C + O)]$$

Where,

R = The annual Payment payable to SDCWA by IID for use of water available for allocation as a result of the Project or Projects in a particular Calendar Year. The annual Payment is not associated with an amortization period.

A = The amount of water available for allocation as a result of the Project or Projects used by IID during the particular Calendar Year.

CW = The total amount of water available for allocation as a result of the Project or Projects during the particular Calendar Year.

CRF = Annualized capital recovery factor for 55 Calendar Years using a defined interest rate equal to: (1) the weighted average true interest cost of:

- all State bonds issued during the design and construction of the Project or Projects if State bond funds are utilized for financing design or construction of the Project or Projects,
- all SDCWA bonds issued during the design and construction of the Project or Projects if SDCWA bond funds are utilized for financing design or construction of the Project or Projects,
- all CVWD bonds issued during the design and construction of the Project or Projects if CVWD bond funds are utilized for financing design or construction of the Project or Projects, and
- all IID bonds issued during the design and construction of the Project or Projects if IID bond funds are utilized for financing design or construction of the Project or Projects; or

(2) if no such bonds are issued during such period of time, then said interest costs shall be the respective interest cost on the most recent bond issue by SDCWA prior to said period.

C = the actual capital cost of the Project or Projects including payments made pursuant to Article 6 of this Allocation Agreement; environmental documentation costs; actual planning, design, and construction costs of the features for the Project or Projects; and any other actual expenditures that are associated with the capital element of the

Project or Projects. Said actual capital cost of the Project or Projects shall be determined by the AAC Committee for the All-American Canal Lining Project and by the CC Committee for the Coachella Canal Lining Project using sound engineering and economic practices.

O = any costs not included in the determination of C above that are proper costs such as interest on construction work in progress, and financing costs of bonds which are not included the determination of C above if bonds are issued during the design and construction of the Project or Projects that are to be amortized (Additional Amortized Cost).

An example calculation for reimbursement for use is attached hereto as Attachment I.

## Attachment I

### Example of Operation of Formula

#### Assumptions

1. Capital Costs (C)    \$ 4,000,000 Year -- (-5)  
                                 21,000,000 Year -- (-4)  
                                 25,000,000 Year -- (-3)  
                                 25,000,000 Year -- (-2)  
                                 25,000,000 Year -- (-1) (Project completed)  
                                 \$100,000,000 total
2. Additional  
   Amortized Cost (O) \$20,000,000
3. Conserved Water (CW)    67,700 acre-feet per Calendar Year
4. Water Used by IID            20,000 acre-feet in Year 80
5. Defined Interest Rate    5 percent

#### Calculation of Capital Cost Payment in Year 80 by IID Assuming Bond Funds are Utilized for Design or Construction of the Project

$$A = 20,000$$

$$CW = 67,700$$

$$\begin{aligned} R &= (A/CW) \times [CRF \times (C + O)] \\ &= (20,000/67,700) \times [0.0537 \times (100,000,000 + 20,000,000)] \\ &= \$1,903,693 \end{aligned}$$